

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE RUVALCABA,)
Petitioner,) No. C 08-2483 CRB (PR)
vs.) ORDER TO SHOW CAUSE
BEN CURRY, Warden,) (Doc # 2 & 4)
Respondent.)

Petitioner, a state prisoner incarcerated at the Correctional Training Facility in Soledad, California, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the California Board of Parole Hearings' ("BPH") May 9, 2007 decision to deny him parole. Petitioner also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

In 1990, petitioner was convicted of attempted murder in Contra Costa County Superior Court and sentenced to an indeterminate term of 7 years to life in state prison.

Petitioner has been found not suitable for parole each time he has appeared before the BPH. On March 19, 2008, the Supreme Court of California denied his current challenge to the BPH's May 9, 2007 decision.

DISCUSSION**A. Standard of Review**

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

B. Legal Claims

Petitioner seeks federal habeas corpus relief from the BPH's May 9, 2007 decision finding him not suitable for parole on the ground that the decision does not comport with due process. Among other things, petitioner claims that the decision is not supported by some evidence in the record. Liberally construed, petitioner's claim appears colorable under § 2254 and merits an answer from respondent. See Biggs v. Terhune, 334 F.3d 910, 914-15 (9th Cir. 2003) (finding that initial refusal to set parole date for prisoner with 15-to-life sentence implicated prisoner's liberty interest in release on parole which cannot be denied without adequate procedural due process protections).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner's request to proceed in forma pauperis (doc # 2 & 4) is
GRANTED.

2. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of

1 this order on petitioner.

2 3. Respondent shall file with the court and serve on petitioner, within
3 60 days of the issuance of this order, an answer conforming in all respects to Rule
4 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
5 habeas corpus should not be issued. Respondent shall file with the answer and
6 serve on petitioner a copy of all portions of the state trial record that have been
7 transcribed previously and that are relevant to a determination of the issues
8 presented by the petition.

9 4. If petitioner wishes to respond to the answer, he shall do so by
10 filing a traverse with the court and serving it on respondent within 30 days of his
11 receipt of the answer.

12 SO ORDERED.

13 DATED: July 22, 2008



CHARLES R. BREYER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSE RUVALCABA,

Case Number: CV08-02483 CRB

Plaintiff,

CERTIFICATE OF SERVICE

v.

BEN CURRY et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jose Ruvalcaba H-21975
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Soledad, CA 93960

Attorney General's Office
455 Golden Gate Avenue
Ste 11000
San Francisco, CA 94102

Dated: July 22, 2008

Richard W. Wieking, Clerk
By: Barbara Espinoza, Deputy Clerk